

***THE HONOURABLE SRI JUSTICE V.V.S.RAO**

+WRIT PETITION NO.26669 OF 2006

% 05.2.2007

M/s.Sarwottam Ispat Limited, represented by its
Executive

Subash Goenka

...Petitioner

Vs.

\$ Transmission Corporation of A.P. Limited, represented by
its

Managing Director, and others

...Respondents

! COUNSEL FOR PETITIONER: MR. D.V.NAGARJNA BABU

^ COUNSEL FOR RESPONDENTS: MR.M.SREERAMULU
REDDY,

STANDING COUNSEL

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>HEAD NOTE:

? CASES REFERRED:

1. W.P.No.8287 of 1988, dated 28.6.1996
(Sri Rayalaseema Alkalies and Allied Chemicals Ltd.,
Gondiparla,
Kurnool District v The A.P.State Electricity Board)

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THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26669 of 2006

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Between:

M/s.Sarwottam Ispat Limited, represented by its Executive
Subash Goenka

... Petitioner

AND

Transmission Corporation of A.P. Limited, represented by
its
Managing Director
And others

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26669 of 2006

ORDER:

The petitioner is a company availing power supply under HT category for its unit engaged in the manufacture of M.S.Ingots. At present its Contracted Maximum Demand (CMD) is 4980 KVA. As per clause 6 of A.P. Electricity Regulatory Commission (Security Deposit) Regulation, 2004 (Deposit Regulations), the second respondent reviewed the adequacy of security deposit and issued a letter dated 20.4.2005 directing the petitioner to pay additional security deposit of Rs.1,05,86,400/-, after taking into consideration the existing consumption deposit of Rs.77,71,429/-. Be it noted that as per clause 4(2) of Deposit Regulations, all HT consumers are required to pay a sum equivalent to two months consumption charges towards security deposit. The petitioner addressed a letter dated 10.5.2006 to Central Power Distribution Company Limited (CPDCL) raising certain objections as to additional deposit charges. The petitioner also requested for permission to pay the amount in instalments. Considering the same, the Chief General Manager (Commercial) sent a communication dated 06.6.2005 permitting the petitioner to pay Additional Consumption Deposit (ACD) charges of Rs.1,05,86,400/- in six equal monthly instalments at the rate of Rs.17,64,400/-. The last instalment is payable on 04.11.2005. On a surmise that there is an error in the calculation of ACD charges for the consumption year 2005-2006, the petitioner made a representation to review the decision. In response thereto, the third respondent revised ACD charges requesting the petitioner to deposit

Rs.84,58,246/- on or before 18.6.2005. The petitioner contends that he is required to pay the amount in six monthly instalments as permitted.

While raising monthly bills for September, October and November 2005, an additional sum of Rs.2,70,432/- at 18% per annum towards belated charges was also raised. In addition to the said amount, fifth respondent also included penal interest at 24% per annum amounting Rs.2,64,577/-. The petitioner then made a representation on 02.11.2006 to the Chief General Manager (Commercial), who rejected to waive the penal interest. Aggrieved by the same, the present writ petition is filed seeking a writ of Mandamus declaring the action of the respondents in demanding a sum of Rs.3,60,577/- towards interest charges @ 24% per annum as illegal and arbitrary.

Learned Counsel for the petitioner submits that though under clause 6 (3) of Deposit Regulations, a consumer is liable to pay interest or surcharge at 18% per annum for delayed payment, levy of penal interest at 24% per annum is beyond the powers of respondents. He placed reliance on Section 47(4) of the Electricity Act, 2003 (the Act, for brevity) and Regulation 6(3) of Deposit Regulations. Reliance is placed on unreported judgment of Division Bench of this Court in **Sri Rayalaseema Alkalies and Allied Chemicals Ltd., Gondiparla, Kurnool District v The A.P.State Electricity Board**^[1]. Secondly he submits that delay if any was due to wrong calculation of ACD charges by the fourth respondent and when the same was brought to the notice of fourth respondent, the same was rectified by issuing revised demand by letter dated 18.6.2005 and, therefore, the levy of penal charges is not permissible. **Per contra**, learned Standing Counsel for CPDCL placed strong reliance on Regulation 4.6 of A.P. Electricity Regulatory (Electricity Supply Code) Regulation, 2004 (Code Regulations) as well as Condition 3.2.2 of General Terms & Conditions of Supply (GTCS) in support of contention that levy of penal interest is sustainable. He further points out that as per the communication dated 18.6.2005 issued by the fourth respondent, the petitioner was required to pay the amount on or before 18.5.2005 and, therefore, the payment raised in the bills is legal.

The question that falls for consideration is whether

respondents are entitled to levy penal interest on the delayed payment of ACD charges.

Section 50 of the Act empowers the State Commission to specify Electricity Supply Code. What is the purpose of such Code? The provision itself enumerates various purposes. It would be appropriate to extract Section 50 of the Act here.

50. The Electricity Supply Code .- The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, tempering, distress or damage to electrical plant, electric lines or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plant or meter.

A plain reading of the above provision would show that the Electricity Supply Code specified by the State Commission shall provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment, restoration of supply of electricity, tampering, damage to electric plant etc. When Section 50 of the Act speaks of the power of the Commissioner to specify Electricity Supply Code to provide interval for payment of electricity charges, it means that all the acts with reference to payment of such charges are to be provided for. In furtherance of Section 50 of the Act, Andhra Pradesh Electricity Regulatory Commission (ERC) has made Regulation No.5 of 2004 called Andhra Pradesh Electricity Regulatory (Electricity Supply Code) Regulation, 2004 (Supply Code Regulations, for brevity). Regulations 4.6 and 4.6.1 of Supply Code Regulations extensively deal with instalment facility and payment of additional charges, which read as under.

4.6 Instalment facility:- Licensee may grant at its discretion, the facility of payment of arrears bills by instalments.

4.6.1 Grant of instalment facility shall not affect the liability of the consumer to pay additional charges for delayed payment as per tariff notifications issued from time to time, till full clearance of arrears. Apart from the additional charges leviable for belated payment, such consumer shall be required to pay the interest charges at 24% per annum on the amount outstanding out of the charges allowed to be paid in instalments.

As per the above two clauses, a consumer may be granted the facility of payment of arrears of bills by instalments. When the distributing licensee grants instalment facility, the same shall not affect the liability of the consumer to pay additional charges and also interest charges at 24% per annum on the amount outstanding out of the charges allowed to be paid in instalments. That is to say as long as the consumer does not clear the arrears, the amount levied shall carry interest at 24% per annum. In this case, as requested by the petitioner by letter dated 10.5.2006, the Chief General Manager (CGM) of CPDCL permitted the petitioner to pay ACD charges in six instalments. Admittedly the petitioner did not pay the amount, as per the instalments granted. Therefore, the request of the petitioner to waive the penal interest at 24% per annum was rejected by the CGM by letter dated 18.11.2006. The same is not vitiated by any invalidity or illegality and it is in accordance with Regulations 4.6 and 4.6.1 of Supply Code Regulations.

Section 47 of the Act enables the distribution licensee to obtain reasonable security and also oblige such distribution licensee to pay interest equivalent to bank rate or more, as may be specified by the ERC. Section 181 of the Act empower the ERC to make Regulations. In exercise of the powers conferred under Section 181 read with 47(1) & (4) of the ACT, ERC has promulgated Regulation No.6 of 2004 called APERC (Security Deposit) Regulation (Security Deposit Regulations, for brevity). Regulation 6 of Security Deposit Regulations deals with Review and payment of Additional Security Deposit for the electricity supplied. Clause 3 of Regulation 6 requires the consumer to pay additional security deposit within 30 days from the date of service of the demand notice and if there is delay in payment, the consumer shall have to pay surcharge at 18% per annum or at such rate, as may be fixed by the Commission from time to time. Regulation 6(3) of Security Deposit Regulations has no application to the present case. When once the petitioner seeks the facility of payment of ACD charges in instalments and Regulation 4.6.1 of Supply Code Regulations is attracted, Security Deposit Regulations have no application. Therefore, the reliance placed by the learned Counsel for the petitioner on

Regulation 6.3 of Security Deposit Regulations is totally misconceived.

In **Sri Rayalaseems Alkalies** (supra), the Division Bench referred Conditions 28.6 and 34 of Terms and Conditions of Supply of Electrical energy by the Andhra Pradesh State Electricity Board (Conditions, for short). While upholding the power of the APSEB to levy interest at 18% per annum on the consumer whenever any amount payable to the Board is permitted to be paid in instalments having regard to the Condition 28.6 of the Conditions, also held that levy of interest at 1½% per month on instalment not paid on due date valid. As seen from Regulation 4.6.1 of Supply Code Regulations, it is well within the powers of the respondents to levy interest at 24% per annum on the instalments.

In the result, the writ petition is devoid of any merit and is accordingly dismissed. No costs.

(V.V.S.RAO, J)

February , 2007.

NOTE:

L.R. Copy be marked.

(By order)

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[\[1\]](#) W.P.No.8287 of 1988, dated 28.6.1996